



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Burnside-Ott Aviation Training Center, Inc.;
Reflectone Training Systems, Inc.

File: B-233113; B-233113.2

Date: February 15, 1989

DIGEST

1. Selection of a proposal for instructional services that assumed a higher level of instructor productivity than agency had originally estimated was necessary was reasonable where record shows that the selection was made based on an explanation of the higher productivity level contained in the proposal.
2. Source selection authority reasonably selected for award lower-priced, lower-scored proposal where he determined that lower-scored proposal was in fact essentially equivalent technically to the higher-scored one and difference in price was significant.
3. Decision not to award to lowest-priced offeror was reasonable where source selection authority determined that the proposal represented a significant performance risk and that the technical superiority of another offeror's proposal outweighed its cost premium.

DECISION

Burnside-Ott Aviation Training Center, Inc., and Reflectone Training Systems, Inc., protest the Naval Training Systems Center's award of a contract for simulator/aircraft systems instructional services for student naval aviators to Ford Aerospace Services, Inc., under request for proposals (RFP) No. N61339-88-R-0022. Burnside-Ott argues that its proposal should have been selected for award since it received the highest combined cost and technical score and that Ford's proposal should have been rejected as technically unacceptable because it failed to conform to material terms of the solicitation. Reflectone, on the other hand, contends that it should have received the award since it submitted the lowest priced, technically acceptable proposal. Reflectone

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also argues that its proposal was improperly evaluated. We deny the protests.

The RFP contemplated the award of a fixed-price contract for delivery of a specified number of hours of training (with increased quantity options) at six Training Air Wings located at Naval Air Stations in Florida, Mississippi, and Texas. The solicitation contained a detailed performance work statement and required offerors to submit technical and price proposals. The proposed contract was to run for a 1-year term from October 1, 1988 through September 30, 1989, with four 1-year options.

The RFP stated that award would be made to the offeror whose proposal offered the "best value" to the government, which was defined as the most beneficial mix of technical approach, price, and other factors specified in the solicitation. The RFP further provided that:

"The Technical Proposal . . . is of primary importance and consequently will be more heavily weighted than price. Within the Technical Proposal, Volume I, Instructional Services is more important than Volume III, Organization, Management, Administration and Transition which is more important than Volume II, Personnel and Corporate Experience.^{1/}

"The Price Proposal, while of lesser importance than technical considerations, is a significant element in the source selection process."

The RFP, as amended, advised offerors that their technical proposals should include information regarding the work shifts and schedules that they intended to implement, including a detailed explanation of how they had derived the productivity levels (hours of instruction per staff year) that they anticipated of their instructors. The RFP further stated that:

"The proposed productive manhours per manyear, as developed for Volume II, Chapter 4, shall serve as a start point for this discussion. Consideration must be

^{1/} Each volume consisted of several chapters or subfactors which concerned specific aspects of the proposals. The most important such items were simulator instruction, aircraft systems instruction, resumes of key personnel, manning levels, training program, and quality control.

given to such factors as the normal NATRACOM [Naval Air Training Command] work year, instruction related ancillary duties and other assigned duties, as well as external elements which impact the efficient execution of a planned simulator flight schedule. Historically based/experienced factors and Government estimates in each of these areas have been identified in the Performance Work Statement. Election to alter or deviate from the furnished information in developing the expected CSI [Contractor Simulator Instructor] productivity level and related man-loaded work shifts and schedules should be fully supported with appropriate rationale."

The solicitation, as amended, indicated that there would be available a maximum of 1896 straight time hours per year for instruction, but admonished offerors to bear in mind that the instructors would need to perform other duties that would reduce the time they would be available to conduct training. The RFP further advised that schedule execution efficiency would be constrained by such factors as simulator availability, student availability, uneven student flow, weather conditions, and unexpectedly lengthy debriefings and that, historically, due to these factors, 242 hours per instructor per year were lost.

Five offerors, including Burnside-Ott, Reflectone, and Ford, submitted initial proposals by the April 18, 1988, closing date. All five proposals were found to be in the competitive range. Each offeror was informed of the deficiencies in its proposal, and on August 19, a request for best and final offers was issued.

The Source Selection Evaluation Board (SSEB) evaluated the final proposals and assigned each chapter of each of the proposals color ratings.

According to the SSEB, all the final offers met or exceeded the RFP requirements with the exception of the staffing levels proposed by Ford and Reflectone, which, according to the SSEB, were insufficient to meet the solicitation's requirements; the proposals were thus coded "red" or unacceptable under that chapter. According to the SSEB, both offerors had proposed productivity levels well in excess of the level that it considered achievable, thereby creating a serious risk to contract performance.

The SSEB's conclusion was based in part on a comparison of Ford's proposed productivity level of 1,673 hours per year and Reflectone's proposed productivity level of 1,650 to the

government estimate of between 1,370 and 1,440 hours per year. In sum, the SSEB did not believe that either offeror proposed a sufficient number of instructors to perform the amount of training required; furthermore, in the evaluators' view, neither proposal contained adequate support for its approach. The SSEB reported its findings to the Source Selection Advisory Council (SSAC).

The SSAC reviewed the SSEB report and conducted its own analysis of those chapters of the proposals that the SSEB had given a rating of either marginal or unacceptable. The SSAC did not revise any of the Reflectone ratings, but raised Ford's rating on Volume I, Chapter 3 from marginal to acceptable and on Volume II, Chapter 4 from unacceptable to acceptable. The SSAC summarized the volume ratings by color and assigned each color a numerical equivalent, which it then multiplied by a predetermined weighting factor. Using this formula, the SSAC derived the following technical scores:

Offeror	Vol. I (30 points) <u>Points</u>	Vol. II (10 points) <u>Points</u>
Reflectone	15.3	5.1
Ford	21.3	8.1
Burnside-Ott	24.3	9.1

Offeror	Vol. III (20 points) <u>Points</u>	Total
Reflectone	14.2	34.6
Ford	16.2	45.6
Burnside-Ott	16.2	49.6

The technical scores were then added to the price scores to derive the following overall scores:

Offeror	Price	Technical <u>score</u>	Price <u>Score</u>	Total <u>Score</u>
Reflectone	\$46,530,758.	34.6	40.0	74.6
Ford	\$50,236,994.	45.6	37.05	82.7
Burnside-Ott	\$55,542,077.16	49.6	33.5	83.1

The SSAC recommended award to Ford as offering the best value to the government. The SSAC reasoned that since, in its view, the Ford technical proposal was very low risk the difference between the two offerors' technical scores did not justify Burnside-Ott's significantly higher price. This recommendation and the adjustment in the color ratings accorded the Ford proposal were based on the SSAC's

disagreement with the SSEB's conclusion that Ford's proposed staffing rates were insufficient. The SSAC found that although Ford had based its proposal on a higher level of instructor productivity than that in the government estimate, it had justified this higher productivity by providing a plan utilizing split shifting, longer shifts to match shifts to instructional periods without deadtime loss, and extensive use of part-time employees to achieve flexibility. In the SSAC's view, Ford's plan was supported in its proposal and achievable. The SSAC further noted that in the event that Ford's staffing plan did not yield the expected efficiency, Ford would be required, due to the firm, fixed-price nature of the contract, to provide additional instructors at no additional cost to meet its obligation to provide the specified number of instruction hours. In addition, the evaluators were impressed with Ford's quality control plan.

With regard to Reflectone, the SSAC found that although it had offered a lower price than either Ford or Burnside-Ott, it had failed to demonstrate how it would meet the government's requirements. Specifically, with regard to Reflectone's proposed staffing levels, the SSAC noted that although Reflectone had indicated in its final offer that its proposal was based on the assumption that each full-time instructor would be able to provide 1,440 hours of training per year, the offeror in fact used an efficiency rate of 1650 hours per year in its supporting data. The SSAC therefore concluded that Reflectone's approach was critically understaffed. The SSAC also found Reflectone's quality control plan to be lacking in specificity and concluded that this lack of specificity coupled with the staffing plan deficiencies posed a significant risk that the contractor might not perform in a satisfactory manner. The SSAC further concluded that with trainer utilization and loading requirements near capacity, any loss of instructor hours could not be recouped if the contractor fell behind schedule.

The SSAC provided its findings to the Source Selection Authority (SSA), who adopted them. In a statement filed in this protest, the SSA reports that based on his consideration of the findings of both the SSEB and the SSAC, he concluded that the Burnside-Ott and Ford proposals were essentially equivalent technically and that the slight scoring advantage enjoyed by Burnside-Ott related to its incumbency. He further concluded that both offerors would provide technically qualified instructors and that Ford's approach to staffing was not inferior to Burnside-Ott's. The SSA determined that because the proposals were about equal from a technical stand point and Ford's price was

substantially lower, Ford's proposal represented the best value to the government. According to his statement, the SSA further determined that Reflectone's proposal was not substantially equivalent to the Ford and Burnside-Ott proposals and that it posed a significant risk; he therefore excluded it from further consideration. On September 30, the Navy awarded a contract to Ford. The two protests followed.

Burnside-Ott Protest

Burnside-Ott's objection to the award to Ford is primarily based on the following grounds. Its main premise is that the SSEB correctly concluded that Ford's final offer was deficient because that firm's approach to staffing was the result of unrealistically high assumptions of instructor productivity and insufficient staffing resources. It argues that the SSAC improperly substituted itself for the SSEB and reversed its determination based on a selective and erroneous de novo evaluation of the Ford proposal. In fact, the protester maintains, the Ford proposal was so deficient that it should have been rejected as technically unacceptable. Similarly, Burnside-Ott objects to the SSA's concurrence in the SSAC's action and complains that both the SSAC and the SSA's decisions are not supported by the contemporaneous record; in this regard, the protester argues that statements by anyone involved in the decision that were prepared after the actual determinations were made should not be considered by our Office. Finally, the protester argues that the SSA impermissibly altered the RFP evaluation scheme by making award to Ford based primarily on price considerations.

We find for the reasons stated below that the SSAC and the SSA acted within their discretion in disagreeing with the SSEB's conclusions and that the SSA's selection of Ford was consistent with the solicitation requirements and supported by the record.

SSAC and SSA Determination

Burnside-Ott does not contend that the SSAC was not entitled to disagree with the SSEB if it had a reasonable basis to do so; it asserts, however, that the SSAC has not set forth such a rational basis here. The protester argues that the agency's source selection plan did not authorize the SSAC to ignore the SSEB evaluation or to make its own selective de novo review of the Ford proposal. The protester contends that it was improper for the SSAC to examine only those portions of the proposals that were considered deficient; rather, the protester urges that if the SSAC wished to

review the SSEB evaluation properly, it should have looked at all its aspects, including, for example, whether the SSEB should have scored portions of the Burnside-Ott proposal higher. Similarly, concerning the mechanics of the SSAC and the SSA determinations, Burnside-Ott complains that the SSAC violated the source selection plan by destroying the records of its deliberations except for the summary report. In this regard, the protester contends generally that our evaluation of the record should be limited to contemporaneous documentation. Finally, the protester argues that the substance of the SSAC's determination simply does not provide a rational basis for overturning the SSEB's conclusion concerning the inadequacy of Ford's proposed approach.

First, as far as alleged deviations from the agency's source selection plan are concerned, they do not themselves provide a basis for questioning the validity of the award selection. Source selection plans are internal agency instructions and as such do not give outside parties any rights. Robert E. Derecktor of Rhode Island, Inc., et al., B-211922 et al., Feb. 2, 1984, 84-1 CPD ¶ 140. Nevertheless, the agency is required to follow the evaluation scheme set forth in the RFP and to conduct its evaluation in a manner so as to reach a rational result. We think that the SSAC acted reasonably in examining in depth only those portions of the SSEB evaluation that it considered doubtful. There was simply no reason for the SSAC to comb through those portions of the SSEB determination that it did not question. Further, we do not think it was in any way unreasonable for members of the SSAC to look at the proposals themselves in the questioned areas and to reach their own independent conclusions.

As far as Burnside-Ott's objection to the SSAC's failure to preserve all of the internal working papers that it generated during its deliberations is concerned we are not aware of any requirement that every piece of paper generated during the evaluators' deliberations be retained. In any event, we believe that the summary report adequately set forth the SSAC's views concerning the Ford proposal and we have no reason to believe that the working papers would be inconsistent with the report's conclusions.

The protester further argues that we should not consider any statements explaining either the SSAC's or the SSA's determinations that were not contained in the contemporaneous documentation. We do not agree. We have long held that in reviewing a selection determination like the one here, we will look at the entire record, including statements and arguments made in response to a protest, so that we may determine whether the particular selection decision is supportable. We do not limit our review to the question of whether the selection was properly supported at the time it was made. Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 CPD ¶ 607.

We now turn to the substance of the SSAC's disagreement with the SSEB regarding the Ford staffing proposal. The dispute focuses on Ford's approach to staffing, which that firm claims will increase the efficiency rate for its instructors above that estimated by the agency and thereby permit it to perform with fewer instructors at a lower price. This approach is based on two major elements. The first is the use of an irregular work week along with some overtime for its full-time instructors which, according to Ford, will allow it to meet the expected variations in the training schedule. Under this plan, for example, an instructor may work 6 hours on one day and 10 hours the next in accordance with the varying training needs. The second major element involves the use of a training staff composed of 70 percent full-time instructors and 30 percent part-time instructors. This pool of part-time instructors is to be used to fill absences of the full-time instructors and to provide flexibility to cover increases due to work surges.

The SSEB reviewed this part of the Ford proposal and noted that it was based on an instructor productivity rate of 1,673 hours per year as opposed to the agency estimate of between 1,370 and 1,440 hours per year. The SSEB concluded that the rate proposed by Ford was not achievable and that the proposal itself did not contain support for Ford's optimistic projection. The SSAC reviewed the same portions of the Ford proposal and arrived at the opposite conclusion. It found that although Ford indeed used a higher productivity rate than did the agency, its proposed approach using split and longer shifts along with the part-time instructors allowed for higher productivity. The SSAC also believed that Ford offered the agency a commitment that in the event its projected level of efficiency was not achieved, it would provide additional staffing as needed without an increase in the fixed price of the contract. The SSA, in essence, adopted the SSAC's conclusions and made award to Ford.

Burnside-Ott argues that the SSAC's conclusions concerning the Ford proposal, which it maintains is technically unacceptable, are vague and unsupported and do not provide a coherent rationale for superceding the SSEB's evaluation and for the SSA's eventual selection of Ford.^{2/} First, the protester points to the SSAC's conclusion that Ford's projected efficiency is justified by its proposal. Next, the protester urges that the SSAC failed to discover an alleged discrepancy between Ford's stated efficiency increase and the actual rate upon which the firm relied. Finally, Burnside-Ott declares that it was not reasonable for the SSAC to conclude that Ford offered to provide additional staffing if the planned efficiency rate is not obtained.

In the evaluation of proposals, neither the selection official nor upper-level evaluators are bound by the recommendation of lower-level evaluators, and as a general rule, our Office will defer to the higher-level officials' judgment even when those officials disagree with an assessment made by a working level evaluation board or individuals who normally might be expected to have the technical expertise required for such evaluations. Bank Street College of Education, 63 Comp. Gen. 393, supra. The final technical evaluation itself is to be governed by the tests of rationality and consistency with the RFP evaluation factors. Id. In determining whether a particular evaluation conclusion is rational, we do not make an independent determination of a proposal's merit; we will, however, examine the record before us and determine whether the judgment exercised by the evaluators was fair and reasonable. See Cadillac Gage Co., B-209102, July 15, 1983, 83-2 CPD ¶ 96.

^{2/} Burnside-Ott also argues based on a statement filed in connection with this protest by the chairman of the SSAC, that the SSAC found that the SSEB technical evaluators had not fully considered language in the RFP regarding staffing level methodology. The protester contends that this indicates that even the Navy's experts could not agree on the solicitation's meaning and that such disagreement indicates that the solicitation, as amended, was ambiguous.

We disagree. The fact that the two groups differed in their application of the language does not mean that the language itself was ambiguous. We find from our review of the record that the inconsistent conclusions were due to differing views as to the adequacy of the Ford proposal, not to differing views as to what the RFP required.

We have carefully reviewed the SSEB and the SSAC reports and the Ford proposal along with the arguments from all parties and we are not able to conclude that the SSAC's judgment that the Ford staffing approach was both acceptable from a technical standpoint and achievable was unreasonable.

Burnside-Ott's first objection to the SSAC report centers on the SSAC's conclusion that Ford had justified its increased efficiency through the use of split and longer shifts and the use of part-time employees. It is the protester's view that the Ford proposal simply contained no support for its claimed efficiency.

We disagree. There is, in our view, no doubt that Ford intended to support its efficiency claim by its explanation of the staffing approach in the proposal. The question is whether that support was sufficient. It is true that the proposal did not contain detailed computations or even a comprehensive explanation as to exactly how the use of different shift lengths and part-time employees would result in the precise efficiency rate needed to support its proposed number of instructors. Nevertheless, the concept was clearly spelled out in the proposal and it seems to us to be a matter of informed judgment as to whether there was sufficient material in the proposal to measure its viability.

We do not think that the RFP required precise mathematical support for any approach which claimed an efficiency rate in excess of that estimated by the agency. In the SSAC's view, Ford's description of its staffing concept was sufficient. Since the proposal did in fact include such a description, we have no basis upon which to interfere with the SSAC's judgment that it provided an adequate basis upon which to accept Ford's projections.

The protester next urges that the SSAC's acceptance of the Ford staffing approach was unreasonable because it failed to detect an error in the proposal. In this regard, Burnside-Ott points out that while the Ford proposal claims a 7 to 8 percent increase in efficiency because of its approach, the proposal is in fact based on a 16 to 22 percent efficiency increase. In response, Ford says that the 7 to 8 percent increase mentioned in its proposal refers only to that which is due to its use of overtime and irregular work week schedules. The awardee notes that the remainder of the increase will result from the efficiencies generated by its use of the pool of part-time instructors.

We have reviewed the awardee's proposal and we find support for its position since the 7 to 8 percent figure is only

mentioned in the context of the irregular shifts. Thus, we do not agree that the SSAC committed an error in this regard.

Burnside-Ott also argues that the SSAC erred in concluding that Ford offered the agency a commitment that should its staffing plan not yield the expected efficiency it would provide the additional staffing needed under its proposed fixed price. The protester notes that while Ford states in a number of locations in its proposal that it will increase the use of part-time instructors or hire additional ones if its efficiency projection is not met, it does not specify that it will pay the extra cost. In any event, the protester argues that even if Ford were obligated to provide the additional staffing at its own expense, this presents a risk of poor performance and is unfair to other offerors for the agency to accept such a proposal.

We have reviewed the Ford proposal and find that the company states that it will provide the necessary staffing if its projections fall short. While it is true, as the protester notes, that Ford does not specifically state that it will provide this backup at its own expense the awardee is clearly obligated to do so whether or not its projections prove to be accurate since it has agreed to supply a specific number of hours of instruction at a firm, fixed price. Department of the Navy--Request for Advanced Decision, Holmes & Narver Services, Inc., B-229558.2 et al., Oct. 4, 1988, 88-2 CPD ¶ 310. There is nothing in the Ford proposal that is at all inconsistent with this obligation. While the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in the evaluation of proposals; here the SSAC concluded that Ford's approach presented little risk. It was the SSAC's opinion that the soundness of its proposed staffing plan along with its commitment to make up the difference if necessary was satisfactory.^{3/} It is clear that both the protester and the SSEB disagreed with the SSAC. We, however, think the SSAC could have reasonably reached such a conclusion.

^{3/} The SSAC noted in its report that Ford's relatively high general and administrative (G&A) and profit rates could be used to make up the shortfall if its projections do not materialize. While the protester claims this view was "ludicrous and astounding," we do not see anything improper in the SSAC's observation that under a fixed-price contract a contractor would likely use its estimated profit and G&A to recover any shortfall because of its inaccurate projections.

Burnside-Ott also complains that the SSAC's acceptance and reliance on Ford's offer to make up any shortfall is unfair to the other offerors because it allowed Ford to, in essence, make an offer without having to reflect it in its price proposal. We do not share the protester's concern in this regard because as we stated earlier under this fixed-price contract Ford would be obligated to provide the contracted-for hours even if its projection turns out to be overly optimistic. In short, since it cannot charge for its effort to make up the shortfall, it need not be included in its price proposal. Further, we do not believe that it is unfair for an agency to accept an offeror's innovative terms if they are not inconsistent with the RFP and are determined to be advantageous.

The protester also objects to the references to the SSAC's experience in scheduling instruction services and to Ford's highly rated quality control plan in support of its conclusion that Ford's proposal showed that it understood the agency's requirements and that its approach represented a low risk. Burnside-Ott argues that the SSEB had more scheduling experience than the SSAC and that the quality control plan has nothing to do with the staffing approach.

We see nothing improper with the SSAC mentioning Ford's strong quality control plan in the context of its conclusion that the Ford proposal represented a low risk. The SSAC did not anywhere state that the quality control plan would somehow be used to make up for any staffing shortfall, as the protester suggests. As far as the relative experience of the various evaluators is concerned, we will not appraise evaluators' qualifications absent a showing of possible fraud, conflict of interest, or actual bias since the selection of evaluators is essentially a matter within the discretion of the agency. Paul G. Koukoulas, et al., B-229650 et al., Mar. 16, 1988, 88-1 CPD ¶ 278.

Finally, in this connection Burnside-Ott states that due to computational errors, the Navy's estimate of instructor productivity was in fact overstated and that the unacceptability of Ford's proposal is even more apparent when its projected level of staffing is compared with the corrected estimate.

First, we are not persuaded by Burnside-Ott's calculations that the government estimate was erroneous. In any event, the RFP did not require the rejection of a proposal merely because the productivity level on which it was based deviated from the government estimate. Rather, it permitted offerors to develop their own figures, so long as their

derivation was explained and supported. Here, as previously noted, the SSAC and SSA concluded that Ford had adequately justified its figures. The extent to which these figures deviated from the government estimate is therefore immaterial.

While the protester has gone to great length to discredit the SSAC report as consisting of "notions, assumptions, manifest error and garble," we think that the report indicates that the SSAC understood the Ford staffing approach and reasonably articulated its grounds for disagreeing with the SSEB's conclusion. The SSAC simply exercised its judgment and accepted Ford's concept as a viable one which could result in considerable savings to the government. It is our role to determine whether that judgment is reasonable and to ensure that there exists in the record a basis for the evaluators' conclusion. We think that the foregoing discussion shows that there is. In this regard, we note that the protester has raised a separate protest ground that the Ford proposal should have been rejected as technically unacceptable because it did not offer sufficient staffing to meet the RFP requirements or provide a justification for deviating from the RFP. Based upon our conclusion that the SSAC's determination to accept the Ford approach was reasonable, there is no reason to treat this matter separately.

Selection Decision

Burnside-Ott argues that even if the Ford proposal was properly found to be technically acceptable, the SSA acted improperly in selecting Ford. The protester points out that in the only analysis conducted at the time the selection was made in which the RFP relative weights for technical and price factors were considered--that used to determine the total weighted score--Burnside-Ott won 83.1 to 82.7. Further, the protester states that there is no contemporaneous agency record of an analysis at any level which could be used to justify a finding that despite the difference in technical scores the two proposals were essentially technically equal.

The evaluation report prepared by the SSAC sets forth its rationale for recommending that despite Ford's lower technical rating it should be selected for award based on its \$5 million lower price. In this regard, the SSAC noted that the two offerors' weighted technical score--including price--82.7 for Ford and 83.1 for Burnside-Ott were "essentially equal." The SSAC further concluded that the price difference was considered significant and observed that "payment of the additional amount to Burnside-Ott is

not justified even though Burnside-Ott had a higher technical score (49.6) than did Ford Aerospace (45.6) since Ford Aerospace was evaluated as very low risk from a technical viewpoint by the SSAC."

The SSA approved the SSAC's conclusion without separately setting forth his reasons and selected Ford. In response to the protest, however, the SSA has submitted a statement describing his reasons for choosing Ford. In this statement, he indicates that he independently concluded that the two proposals were "essentially equivalent technically." In this regard, the SSA observes that "the slight four-point scoring advantage of the Burnside-Ott proposal appeared to relate to incumbency, and in my view would be quickly overcome by Ford."

In this connection, we have held that even if price is the least important evaluation criterion, an agency may properly award to a lower-priced, lower-scored offeror if it determines that the price premium is not justified. Dayton T. Brown, B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321. Although technical point ratings are useful as guidelines in the procurement process, too much reliance on them should be avoided. Wheeler Industries, Inc., B-193883, July 20, 1979, 79-2 CPD ¶ 41. The selection should not be based on the difference in technical scores per se, but rather on the contracting agency's judgment concerning the significance of that difference and on whether the record reflects that the judgment exercised was reasonable. See TEK, J.V. Morrison-Knudsen/Harnischfeger, B-221320, et al., Apr. 15, 1986, 86-1 CPD ¶ 365. We have recognized that whether a given point spread is significant or not depends on all of the facts and circumstances surrounding a procurement. PRC Kentron, Inc., B-230212, June 7, 1988, 88-1 CPD ¶ 537. It is our view therefore that the SSA could have properly selected Ford based on its lower price despite Burnside-Ott's higher technical score.^{4/}

Nevertheless, as the protester points out, that selection must be based on a reasoned judgment as to the actual technical significance of the difference in score between the proposals. In this connection, the protester argues that the contemporaneous record contains no analysis of

^{4/} Even if the selection was as the protester argues, based on the total weighted scores the outcome would not be different as the selection official still has the discretion, even when the scoring includes price, to examine the scores and determine the difference in technical merit. Lektron, Inc., B-228600, Jan. 25, 1988, 88-1 CPD ¶ 69.

this; merely conclusions that the proposals are equal. Further, Burnside-Ott maintains that the SSA's declaration that he considered the Burnside-Ott four point advantage to be based on incumbency is not supported.

First, contrary to the protester's position the SSA did not have to find that the Ford and Burnside-Ott proposals were equal technically in order to select the lower-priced Ford offer. He only had to conclude that whatever technical advantage the protester offered was not worth the additional \$5 million price premium. Dayton T. Brown, B-229664 supra.

We think that the record reasonably supports the SSA's conclusion. Whether or not it was due to incumbency, the SSA found, that Ford's staffing approach was not technically inferior to the protester's. Thus, he in essence determined that the two proposals were equivalent even in those staffing areas in which the SSAC did award Burnside-Ott a higher score. It was his view that from an overall standpoint that once Ford was in place its performance would not differ significantly from Burnside-Ott's. Based on the evaluation record we are unable to conclude that the SSA exercised his judgment arbitrarily in deciding that the advantage, if any, offered by the Burnside-Ott proposal was not worth an additional \$5 million under this fixed-priced contract.

Reflectone Protest

Reflectone contends that it should have been selected for award because its proposal meets or exceeds all of the RFP's requirements and its price was lower than Ford's. In this regard, the protester complains that its technical score was deflated because the evaluation of its proposal was erroneous.

The solicitation did not provide for award to the lowest-priced, technically acceptable proposal; rather, it provided for award to the offeror whose proposal offered the "best value" to the government in terms of technical approach and price, with technical aspects being accorded greater weight than price. Where an RFP does not specify that price will be the determinative selection factor, an agency is not required to make award to the firm offering the lowest price; it may properly select for award a higher-rated, higher-priced proposal if it determines that the technical superiority of the selected offeror's proposal justifies the price premium. University of Dayton Research Institute, B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178. Since the judgment as to whether the difference in technical merit is worth the difference in price is, like other technical judgments, the

responsibility of the agency, we will question it only if the protester shows that it was unreasonable. Kay and Assocs., Inc., B-228434, Jan. 27, 1988, 88-1 CPD ¶ 81. For the reasons stated below, we find that the agency's technical evaluation of the Reflectone proposal was reasonable, as was its determination that Ford's technical superiority justified award to it despite its higher price (\$46,530,758 for Reflectone versus \$50,236,994 for Ford).

Here, the agency determined that Reflectone's proposal did not represent the best value to the government despite its lower price because its overall technical score was substantially lower (34.6 versus 45.6) than Ford's. The SSAC, with which the SSA concurred, found that Reflectone had failed to demonstrate in its proposal how it would meet the RFP's requirements for staffing, which represented a significant performance risk to the government. Specifically, although Reflectone had indicated in its final proposal that its staffing was based on an instructor productivity rate of 1440 hours per year, a rate that was consistent with the agency's estimates, it used a productivity rate of 1650 hours per year in its detailed supporting data and the proposal contained no explanation of this apparent discrepancy nor did it contain any methodology to demonstrate how Reflectone would make up the shortfall.

Reflectone argues that it used the 1,650 figure without explaining its derivation because the RFP, as amended, explicitly stated that the 1,650 hour instructor productivity rate was necessary to meet the Navy's requirements. Reflectone contends that since it did not deviate from the information furnished in the RFP in developing its estimated productivity level for instructors, no explanation was required in its proposal.

The Navy disagrees that the solicitation anywhere furnished the 1,650 hour productivity rate. It appears that Reflectone may have derived this figure by subtracting the number of hours identified in the solicitation as historically lost due to schedule execution inefficiencies (242) from the number of hours available for instruction in a normal work year (1896). There is no explanation at all in Reflectone's proposal, however, of how it intended to achieve this level of efficiency. We therefore agree with the agency that Reflectone has not at all explained how it expected to achieve a productivity level of 1,650 hours per instructor per year. Some sort of rationale was necessary here because despite the protester's argument to the contrary, we cannot find where the RFP specified that offers be based on a 1,650 hour productivity rate.

Reflectone also objects to the fact that the agency used a staffing level estimate in evaluating proposals, but did not provide this figure to offerors in the RFP. An agency is not required to disclose in a solicitation an estimate developed by its evaluators to assess the adequacy of offerors' proposed staffing levels. Intelcom Support Services, Inc., B-222547, Aug. 1, 1986, 86-2 CPD ¶ 135. The only requirement is that the RFP place offerors on notice that this is an area which will be evaluated, as the solicitation here clearly did. Mark Dunning Industries, Inc., B-230058, Apr. 13, 1988, 88-1 CPD ¶ 364.

Reflectone further argues that even if its approach would result in understaffing, this did not represent a risk to the government since it would still be obligated to perform the stated number of hours training at the price proposed.

Reflectone is correct, as we indicated earlier in the Burnside-Ott protest, that due to the fixed-price nature of the contract, it would be bound to preform the stated number of hours of instruction at its offered price whether or not its proposed staffing plan achieved the contemplated level of efficiency. The SSAC recognized this fact, but concluded that the quality of performance might nevertheless be threatened given that Reflectone had structured its proposal in such a way (i.e. by providing high wages for instructors and low G&A/profit loading) that it would have little flexibility to cover a potential shortfall of instructors via the payment of overtime or the employment of additional instructors. Ford, on the other hand, had used lower wage and higher profit loading rates, which, according to the SSAC, allowed it the flexibility to better absorb the financial burden that the use of overtime or the employment of an additional number of instructors would impose should either be necessary in order to provide the required level of instruction.

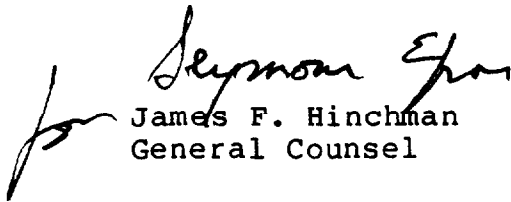
A second major technical shortcoming in Reflectone's proposal cited by the SSAC was the marginal quality of its quality control plan. The SSAC found that Reflectone's plan lacked specificity. The protester argues that it summarized its quality control procedures in its proposal and indicated that its detailed procedures, which had not been submitted with the proposal due to their volume, were available upon request.

We have reviewed Reflectone's proposal, and we think that Reflectone has mischaracterized the language in its proposal regarding the availability of a more detailed quality control plan. Reflectone states in its proposal that it "will provide a complete Quality Control Manual including

amendments for each site to the contracting officer for acceptance not later than 30 days after commencing transition." The logical inference to be drawn from this language is not that Reflectone already had a more detailed plan available for government inspection upon request, but rather that the detailed information would be furnished later. Under these circumstances, we think that the Navy was clearly justified in assessing the sufficiency of Reflectone's quality control plan on the basis of the information provided to it in the proposal.

In our view, the record demonstrates that the Navy's evaluation of Reflectone's proposal was reasonable. In view of this conclusion, we also find that the agency had a reasonable basis for determining that the difference in technical merit between the Reflectone and the Ford proposals outweighed their difference in price. We therefore deny Reflectone's protest.

The protests are denied.


James F. Hinchman
General Counsel